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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,801	01/07/2004	Thomas Alfred Plato	4011.001	5133

7590 08/23/2006

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EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/752,801	<b>Applicant(s)</b> PLATO ET AL.	
	<b>Examiner</b> NEIL LEVY	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-15 is/are pending in the application.
- 4a) Of the above claim(s) 7,8 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,9-11,13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-4,6-15 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 7,8,12 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/5/05.

#### ***Claim Rejections - 35 USC § 102***

Claim 13 stands rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al 5888930

. Solid formulation, as pellets, provided as polymers for long term delivery of grandlure and insecticides (column 6, line54) are shown.

Pesticides are used, thickeners are silica (column 5, lines 61-64) preparation is as known in the art (column 7, lines 16-18) and so obvious to the artisan to provide in order to optimize desired attributes; cost, as thickeners, or fillers, of silica permit less polymer to be used. Likewise with specific plasticizers, known to be used dependent upon polymer compatibility.

Claim1-4, 6, 9-11, 13 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over SMITH et al 5888930

Contrary to applicant's arguments of only 1 active, see column 7, lines 20-24, where phermone plus insecticide (only a handful of each is specified, lines 9-16) is especially useful. Arguments that the instant invention are not SMITH'S, are best addressed by incorporating the processing and curing as explained to result in a different bead, into the claim. Both inventions provide long term release of actives, and we would find some pores in the instant matrices, else where does the dichlorvos/grandlure reside?

.Claim1-4, 6, 9-11, 13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over VON KOHORN et al 4160335

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solid matrices (figures) as sandwiches of PVC, plasticizer-diethyl pthalate, and thickener mineral, of plastisols with insecticide and attractant are provided at example 2, to provide sustained release. Pheromones include (claim 13) boll weevil control (Table II, column 19) grandlure, with insecticide dichlorvos (DDVP-column 21, top). Sterilant are at column 14-16, at least one active is seen (claim 4) thus, insecticide sterilant would be obvious to the artisan to incorporate, as of instant claim 6.

### ***Claim Rejections - 35 USC § 103***

Claims 1-4,6, 9-11,13 –15 are rejected under 35 U.S.C. 103(a) as being unpatentable over MCKIBBEN 6183733 in view of ANGST et al 575956 and further in view of Rowe 2775994

MCKIBBEN, of record, controls boll weevil with the instant polymer matrices of known insecticide, and grandlure, as instantly claimed in open language; thus permitting of other volatiles, and growth regulators (instant claim 6, see column 6, top Dimlin).

Pesticides are used, thickeners are silica (column 5, lines 61-64) preparation is as known in the art (column 7, lines 16-18) and so obvious to the artisan to provide in order to optimize desired attributes; cost, as thickeners, or fillers, of silica permit less polymer to be used. Likewise with specific plasticizers, known to be used dependent upon polymer compatibility.

ANGST shows the instant weevils (column 3, line 24) to be controlled with grandlure (column 8, line 20) and dichlorvos (column 10, line 44) in slow release matrices (column 9, lines 17-56) with evaporable conventional insecticides. Mineral fillers, the instant thickener, include silicon dioxide (column 14, lines 40-46).

ROWE is cited to show alternative plasticizers with vinyl chloride polymers, as of Mckibbens; dioctyl & other pthalates, including that of instant claim 14-butyl benzl (column 7, lines 51-56).

The polymer, thickener, plasticizer have not been shown by applicant to provide unexpected or unobvious results over what is known in the art  
It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a natural composition, to use one of MCKIBBEN---  
-----modified with -ANGST-----to provide Boll Weevil control compositions of known Boll weevil pheromones with known insecticides, Dichlorvos ANGST -----teaches one having ordinary skill in the art would be motivated to perform this modification in order to keep insects from where they are not wanted.

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The selection of each ingredient is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effect desired.

There is no unobvious and/or unexpected results obtained since the prior art is well aware of the use of effective insecticides & pheromones specific to the insect of concern -as a means of insect control and adjuvants such as plasticizers, and the use of ingredients for the functionality for which they are known to be used is not a basis for patentability.

It has not been clearly established by an objective showing of some additional unobvious and/or unexpected effects-----attendant to the application of unspecified concentration of Grandlure & Dichorvos-----to the area of concern-----to control boll weevils, to use a standard insecticide, organophosphate, as indicated by MCKIBBEN, as dichlorvos, shown by ANGST as a standard organophosphate with pheromones, to control insects including boll weevils.

Claims 1-4, 6, 9-11, 13-15 are.....rejected under 35 U.S.C. 103(a) as being

unpatentable over VON KOHORN 4160335 in view of ROWE- 2775994 and

OGAWASARA.- 3888830

VON KOHORN (above) provides compositions for control of various insect pests, but does not specify silicon dioxide thickener or butyl benzl pthalate. However, these are well known thickeners and plasticizers, and the use of ingredients for the purpose for which they are known to be used is not a basis for patentability.

ROWE is cited to show equivalence of plasticizers with vinyl chloride polymers-VON KOHORN'S dioctyl pthalate replaceable with equivalent pthalates, as of claim 14-butyl benzl (column 7, lines 51-56).

OGAWASARA is cited to show similarly, equivalence of fillers of silica and calcium carbonate (column 8, lines 23-26). One in the art would have found it obvious to utilize equivalent plasticizers, the instant butyl benzl pthalate, and silica, for VON KOHORN'S plasticizer and filler.

Applicant's arguments filed 6/7/06 have been fully considered but they are not persuasive. In essence, applicant argues Smith has only 1 active, & is porous Porous solids are not excluded in this invention- both this & Smith are the claimed solids. Further, the instant is claimed in open language – thus, other attributes & components are permissible- those of the cited prior art do not interfere with function as solid matrices of insecticides & pheromones selected to provide sustained release for control of selected insects of concern, inclusive of Boll weevils.

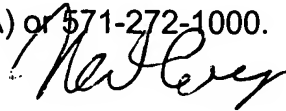
Wright, however, is not directed to chemical control, & is overcome by applicant's amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NEIL LEVY  
Primary Examiner  
Art Unit 1615

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